

# **Brownfields Public Meeting**

## **Draft Grant Guidelines**

### **September 26, 2002**

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## **I. Introduction**

Mike Shapiro, Principal Deputy Assistant Administrator of the U.S. Environmental Protection Agency's (EPA's) Office of Solid Waste and Emergency Response (OSWER), welcomed the participants during both the morning session (targeted to public and non-profit sector stakeholders) and the afternoon session (targeted to private-sector stakeholders). Mr. Shapiro provided an overview of the events that led to the development of the draft grant guidelines under review:

- Passage of the Small Business Liability Relief and Brownfields Revitalization Act (P.L.107-118) in January 2002;
- Input from a series of stakeholder listening sessions in the spring and other informal outreach efforts;
- Guideline drafting by EPA staff; and
- A *Federal Register* notice regarding this meeting and posting of the draft guidelines on EPA's Brownfields web site (<http://www.epa.gov/brownfields>).

Mr. Shapiro noted that this was the last opportunity for public comment before the guidelines are finalized (estimated *Federal Register* notice and web posting date is October 9, 2002) for the first grant awards made under the new law. EPA will continue to consider input based on the lessons learned during Fiscal Year 2003 (FY 03) prior to the award of the FY 04 grants. In addition to the comments provided at the meeting, written comments received by September 26 will also be considered prior to finalizing the grant guidelines for the FY 03 grants. The draft guidelines released for public review and comment are for the three primary grant types—assessment, cleanup, and revolving loan fund (RLF) grants. Guidelines for the other grant programs, as well as for the non-grant elements of EPA's Brownfields Program, are being drafted and will be released throughout the fall.

Linda Garczynski, Director of OSWER's Office of Brownfields Cleanup and Redevelopment (OBCR),

provided an overview of the continuing goals of EPA's Brownfields Program under the new law:

- Protecting the environment;
- Promoting partnerships;
- Strengthening the marketplace; and
- Sustaining reuse.

Ms. Garczynski reviewed some of the highlights of the expanded grant program and the application process under the proposed guidelines that were drafted based on the new law and stakeholder input. EPA also plans to release and post on its web site the answers to frequently asked questions received throughout the FY 03 application cycle.

### **Streamlined Application Process**

The draft guidelines outline a two-step proposal application process designed to do the following:

- Reduce the overall burden to the applicants and reviewers;
- Integrate the application process for the three principal grant types; and
- Simplify rules for awarding and implementing the grants.

The review and selection process was set up to allow the regions to coach the grant applicants throughout the application process. In addition, community involvement continues to be an integral part of the application process.

### **Proposed Application and Award Schedule**

The proposed deadline for the initial proposals is November 27, 2002, but EPA is considering pushing back this deadline based on comments already received. EPA intends to notify the applicants that make it to the second phase of the application process in January 2003. Under the proposed schedule, the award decision would be made in March 2003 and announced in April 2003. Grant agreements will be negotiated by September 30, 2003.

### **Expanded Scope of Grant Recipients**

Under the new law, a broader range of government organizations (e.g., chartered redevelopment agencies, councils of government) are eligible to apply for the grants. In addition, non-profit organizations are now eligible for cleanup grants (or subgrants under an RLF grant) where they own the properties being targeted by the cleanup funding.

### **Expanded Scope of Properties and Activities**

Passage of the law enables EPA to use its brownfields grant funding at a broader spectrum of properties (e.g., certain petroleum contaminated properties, mine-scarred lands, and properties with controlled substances contamination). In addition, the definition of a brownfield is now based on a broader foundation of "real property" and therefore can include residential as well as commercial and

industrial properties. Although the law excludes certain types of property from funding eligibility, the law allows EPA to make property-specific funding determinations to allow funding for most types of properties typically considered brownfields.

The law also expands the type of activities that can be funded. For example, the assessment grant funding can now be used for planning, health monitoring, and land-use controls. And, direct cleanup grants that do not need to be repaid are now part of EPA's brownfields grant program.

### **Limitations on Grant Program**

Just as before the law was passed, neither sites listed (or proposed for listing) on the National Priorities List (NPL) nor federal facilities are eligible for brownfields grant funding. Both the RLF and the direct cleanup grants require a 20 percent cost-share requirement from the grant recipient. The cost-share requirement can be satisfied with in-kind services, equipment, or materials. The grant funding cannot be used for administrative costs or used to pay response costs at a brownfield where the recipient of a grant or loan is potentially responsible under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA).

## **II. Comments and Questions**

Participants during both sessions raised questions, sought clarification, and made comments regarding the draft guidelines. These remarks and EPA's responses (where questions were asked or clarification sought) are summarized below by the following topics—application process; eligible grant entities; eligible properties and activities; grant limitations; miscellaneous; and non-grant program comments.

### **Application Process**

- A comment was made regarding whether the grant applications were really streamlined and simplified since the same page limit is established for both the initial proposal and the second phase of the application.
  - S** The initial proposal provides a page limit that covers all three grant types, while the second phase provides the same page limit but for each grant type applied for.
- Clarification was sought regarding whether the initial proposal requires compliance with all criteria, with supplemental information on the criteria provided in the second phase.
  - S** The initial proposal covers three of the 10 statutory criteria, plus certain other basic threshold eligibility issues (e.g., Is the applicant an eligible entity? Did the applicant involve the community?). The second phase provides the opportunity for the applicant to address the remaining statutory criteria.
- EPA was asked about plans to conduct additional outreach to assist the potential applicants.
  - S** Several outreach efforts are being planned, including regional training sessions; regional coaching for the applicants; a Marketplace of Ideas session during the Brownfields 2002 Conference (November 13–15, 2002, in Charlotte, NC); and posting of frequently asked

questions to EPA's brownfields web site.

- Clarification was sought about the page limits and whether EPA would read material that was provided beyond the specified page restrictions.
  - S** EPA may read material beyond the page limitations, but extensive materials provided beyond the page limits are not encouraged and applicants who do not adhere to the page limits assume the risk that EPA reviewers will not have time to carefully consider the additional materials.
- A question was raised regarding how the regions will process those applicants passing the initial proposal phase.
  - S** EPA Headquarters will have to wait and see how many quality applications are received before determining what, if any, guidance it will provide to the regions about a targeted number of applications that can proceed to the second phase.
- A comment was made that there is little linkage required between these grants and job training grants and programs. EPA was encouraged to provide a stronger link to foster leveraging of job training programs in the grant community, especially with the cleanup grants.
  - S** EPA Headquarters will work with traditional job training grant recipients to stress the flexibility within the new law that allows nonprofit organizations to apply for cleanup grants and subgrants under the revolving loan fund for cleanup on sites they own.
- EPA was encouraged to consider providing more specific guidance regarding the sustainable reuse criteria to include such things as providing credit for mixed uses, decreases in auto miles traveled, and other factors that indicate the reduction of threats and overall improvement to the health of the applicant community.

### **Eligible Grant Entities**

- A question was raised whether federal home loan banks might get funding to assist tribes.
  - S** The banks would not be eligible grant entities, but the tribes are eligible (under both the competitive Subtitle A grants and the allocated Subtitle C grants for states and tribes). A bank could partner with a tribe and assist with the application and the project after award.
- Clarification was sought on the ownership requirements for direct cleanup funding.
  - S** To receive direct cleanup funding (either through a cleanup grant or through a subgrant from an RLF grantee), the eligible entity or the non-profit organization must own the property. Typically, this will require fee simple ownership. EPA may look at other ownership status scenarios on a case-by-case basis to determine whether the potential recipient is eligible for direct cleanup assistance. Although EPA is looking further at the question of timing of the ownership determination, EPA expects to make the determination based on ownership status at the time of award (versus the status at the time of the application).

- Clarification was sought regarding whether similar eligible entity and ownership requirements extend to potential loan recipients under the RLF grants.
  - S** Loans issued under the RLF grants can be issued to private parties, as long as they are not potentially responsible at the site under CERCLA. Prospective purchasers would be eligible for a loan. A municipality that might be potentially responsible at a property may still apply for an RLF grant—it just cannot use the brownfields funding at sites where it is potentially responsible.
- Clarification was sought regarding state funding eligibility.
  - S** States are eligible for two types of funding. First, states can apply for the competitive grants to be awarded under Subtitle A of the new law. In addition, under Subtitle C of the new law, states and tribes will be allocated funding to establish or enhance their voluntary response programs.

### **Eligible Properties and Activities**

- Clarification was sought regarding whether issues such as asbestos and lead paint contamination could be addressed by the new grant funding.
  - S** EPA noted that the law is silent on indoor release issues. While the brownfields grants are not intended to focus on such indoor releases, if they are part of a larger brownfield assessment or cleanup project, then grant funds could be used.
- Clarification was sought on the types of activities that could be funded under the cleanup and RLF grants, especially demolition-type activities.
  - S** Brownfields grant funds can be used for demolition activities that are part of the cleanup; demolition activities that relate only to the redevelopment are not allowable.
- Clarification was sought regarding the prohibition against brownfields grant funds being used at CERCLA removal sites and Toxic Substances and Control Act (TSCA) sites.
  - S** Detailed information on property eligibility is provided in appendices 3 and 4 to the draft grant guidelines. With regard to removal sites, they are eligible for brownfields grant funds as long as the removal activities are closed out (e.g., properties that have had past CERCLA removal actions but still have residual contamination to address may be eligible). If there are no planned or ongoing CERCLA removal activities, then the property may be eligible. With regard to TSCA facilities, EPA's goal is to allow as many sites as possible for brownfields grant funds. EPA expects that only a few facilities will fit into the exclusion.
- EPA was encouraged to provide additional clarification about the definition of mine-scarred lands to include references to abandoned mines as defined by federal statutes and also to encourage grant recipients addressing mine-scarred lands to work with their relevant state regulatory authorities.

### **Grant Limitations**

- Clarification was sought about the administrative cost limitations; in particular, whether training

would be considered an administrative cost.

- S** Generic costs not associated with a specific program or property activity are considered administrative and will not be allowed. General environmental training would not be allowable, but site-specific training would be. EPA expects to make some case-by-case determinations regarding what is/is not allowable under this provision.

### **Miscellaneous**

- A question was raised about whether, and at what stage, the grant applicant needs to involve the state regulators.
  - S** This information will be fleshed out in the second phase of the application process when several state-related questions are asked (e.g., Is the property enrolled in the state voluntary response program? Is the applicant working with the state environmental authorities?). The law requires compliance with federal and state laws.
- A question was raised about the applicability of the National Contingency Plan (NCP) and whether guidance on these issues would be released.
  - S** EPA is working on determining which elements of the NCP will be applicable to the brownfields grant recipients. These requirements will be included in the terms and conditions of the grant agreements. The clear message from the law is to rely as much as possible on the state authorities versus provisions of the NCP. EPA is working with the states as it makes final determinations about which elements will be applicable. EPA does not anticipate that any additional general guidance on the NCP applicability will be added to the grant guidelines prior to their final release in October.
- A question was raised whether the RLF terms and conditions will replace the current Brownfield Cleanup Revolving Loan Fund (BCRLF) Administrative Manual.
  - S** Unlike guidance contained in the administrative manual, terms and conditions will be legally binding on the grant recipients. EPA expects to revise the administrative manual with an anticipated release in FY 03 as cooperative agreements are being finalized.
- Clarification was sought on whether EPA would be issuing guidance regarding the transition option for existing BCRLF pilots.
  - S** EPA is drafting guidance about how existing BCRLF pilots can transition to the new rules and expects to release the guidance in 3 to 4 weeks. There is no deadline for pilots to transition because transitioning is not mandated. However, EPA is encouraging pilots that choose to transition to do so as soon as possible, preferably before June 2003. After June 30, 2003, requests for transition may be made only during a specified "open season" to be announced by EPA.
- Clarification was sought on how the Underground Storage Tank (UST) program relates to the expanded Brownfields grant program.

- S** The existing UST program will continue as is. The expanded brownfields provisions are meant to supplement, not supplant, the UST program—primarily in the area of abandoned facilities that are not directly addressed by the Leaking Underground Storage Tank (LUST) fund.
- A question was raised regarding whether the grant guidelines would be promulgated as regulations.
  - S** The new law expressly authorizes EPA to issue guidelines for grant applicants. To allow maximum flexibility and future improvements to the grants and the application process, the guidelines will not become regulations. Rather, EPA will administer the grants under the general grant regulations at 40 CFR Parts 30 and 31.
- EPA was encouraged to extend the requirement for meaningful community involvement past the application process and to require ongoing community involvement throughout the grant period.

**Non-Grant Program Comments**

- EPA was encouraged to hold similar stakeholder sessions for other guidance being drafted (e.g., liability guidance).

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